

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

OFFICE DEPOT, INC.

Employer

and

Case 19-RC-14279

GENERAL TEAMSTERS LOCAL 174,
affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

¹ Both parties submitted timely briefs, which were duly considered. The Petitioner moved to strike an attachment from the Employer's brief. The attachment at issue was a copy of a decision and direction of election from another region. DDE's are public documents and I am able to take administrative notice of such documents. Therefore I will not strike the attachment to the Employer's brief. However, DDEs not reviewed by the Board are only examples of how other regions have dealt with representation issues and do not have any precedential value.

All regular full-time and regular part-time Delivery Service Representatives, Delivery Service Representative Assistants, Routing leads and Check-In Clerks employed by the Employer at its Kent, Washington customer service center, and its Mt. Vernon and Everett, Washington facilities; excluding all other employees, guards and supervisors as defined in the Act.

Issues

The Employer is a Delaware corporation engaged in the business of retail and non-retail sales of office supplies, products and furniture. The Petitioner seeks to represent a unit of drivers² at the Employer's Kent, Washington distribution center. The Employer contends the proposed unit is too narrow and should consist of all transportation and warehouse employees located at the Kent facility. In addition, the Employer contends the drivers at two satellite locations - Everett and Mt. Vernon, Washington - should be included in any appropriate unit. Alternatively, the Employer argues that the transportation department employees (drivers, assistants, check-in clerk and routing lead) at Kent, Everett and Mt. Vernon comprise the only appropriate unit.

Facts

The Kent facility is comprised of warehouse, transportation and administrative offices, all of which deal with commercial customers directly, as opposed to supplying the Employer's numerous retail locations. The warehoused products at Kent are shipped there by third party suppliers, received, inventoried, warehoused and ultimately "picked" from the warehouse, to be distributed to customers through a fleet of Employer trucks. The Kent warehouse (known as a "customer service center", herein called the CSC) is headed by the director of operations, Jaqui Zanotelli. The various warehouse managers and a senior transportation manager, Nick Matuschenko, report to Zanotelli. Three transportation managers report to Matuschenko, including the manager for the Portland, Oregon facility, which is not at issue in this matter. The two remaining transportation managers, Mark Whitten and Jim Brownlow, supervise the drivers at Kent, Mt. Vernon and Everett³, as well as the routing clerk and the check-in clerk.

There are approximately 44 drivers at the Kent CSC, two at Everett and five at Mt. Vernon⁴. The drivers report to work in the morning at 5:15, 6:00 and 7:00 a.m. and work an eight-hour shift plus overtime as required. The drivers as well as other employees use time clocks at various locations around the facility. In Kent, there is a brief (5-15 minute) morning driver meeting with supervision (called a huddle) and a longer (30-45 minute) safety meeting once a week. These meetings take place in a common room used by transportation and warehouse employees, but only the drivers attend these meetings. After the morning meeting, the drivers pick up their phones, hand computer and paperwork from the leads, and then make a safety check of their vehicle. The trucks have already been loaded by the warehouse employees. The routing and most of the paperwork are stored electronically on the hand computer. The routing has been pre-determined by the router and the delivery goods are loaded in the appropriate order for delivery. (Drivers working after certain holidays have to load their own trucks due to the absence of warehouse employees on the holiday, but this appears to

² Also called Delivery Service Representatives (DSRs).

³ I note that Everett is approximately 50 miles north of Kent and Mt. Vernon is another 35 miles north of Everett.

⁴ There are no warehouse employees located at Everett or Mt. Vernon.

be limited.) The drivers then proceed to make their rounds and do not return to the Kent CSC until their route is finished.⁵ The drivers take their breaks and lunch period while away from the Kent CSC facility.⁶ Once the drivers return for the day, they report to the check-in clerk, who processes their paperwork, cash and checks. They also report any product or delivery problems. This interaction takes approximately 5-15 minutes for each driver. The drivers also discuss any routing or delivery problems with the routing lead on a daily basis. The routing lead determines the routes the day before and the information is transmitted to the warehouse for loading sequence. Any problems or difficulties with the routing sequences are discussed with the drivers when they return from their routes. All drivers can communicate with their supervisors or the dispatch people through the mobile phone system when necessary. The record does not show the frequency of these phone contacts between the drivers and the CSC.

There are also four bulk routes, which deliver large orders, furniture and similar items. These are operated in the same manner as the regular routes, with addition of a driver's assistant (also known as a DSR assistant). These routes do return to the Kent CSC more frequently, as the vehicles cannot always accommodate all of the material to be delivered on a given day. The driver's assistants help out with paperwork and delivery of the heavier items. Warehouse employees are utilized as driver's assistants on a regular basis, since there are only two drivers' assistants and four bulk routes. There are also lead DSRs⁷. Their primary function is to act as a coordinator and to make sure the work flows smoothly, and fill in where needed as drivers. The record indicates a significant portion of their time is spent driving vehicles.

The Mt. Vernon and Everett drivers are supervised by Whitten in Kent. Those drivers punch time clocks, as do the Kent CSC employees, and the time is transmitted to Kent. Those two locations are operated at the Employer's retail stores in those cities, utilizing a portion of the store loading docks for staging and loading of their vehicles. Their orders are processed in Kent, loaded onto a third-party carrier and transported from Kent to the Everett and Mt. Vernon store docks, for delivery the next day by Employer drivers. These drivers trans-load the goods into their own trucks and then proceed on their routes for the day. The record does not indicate if the Everett and Mt. Vernon drivers utilize the same phones and computers to keep track of deliveries or if they have any contact with the routing lead or the check-in clerk.

Everett and Mt. Vernon drivers are subject to the same policies, wage scales and benefits as are the Kent drivers and all other Kent employees. Kent drivers cover the Everett and Mt. Vernon routes when there are staff shortages, such as vacations. If the need for a replacement is known in advance, the replacement drivers' trucks are loaded at the Kent CSC and driven by them directly to the Everett or Mt. Vernon routes. In very limited instances when there is no advance notice (such as illness), the Kent driver will have to drive to one of the other locations, load the truck and then do the delivery. Other than an initial orientation and training, the Mt. Vernon and Everett drivers do not have any contact with the Kent CSC. There are social functions open to all Kent employees, such as a Christmas party, but the record does not show if that applies to Everett or Mt. Vernon drivers. In recent months, there was at least one transportation department barbeque limited to Kent CSC transportation department employees. Again, the record did not indicate the extent, if any, of the Mt Vernon and Everett participation.

⁵ In some limited situations they may return to the CSC for additional products, such as orders too large for one delivery.

⁶ The Mt. Vernon and Everett drivers also are absent from those stores for the bulk of the day and take their breaks and lunch periods away from the stores.

⁷ Neither party contends they are supervisors within the meaning of Section 2(11) of the Act.

The drivers earn between \$11.05 and \$15.20 per hour; the assistants, between \$9.20 and \$12.85. However, there are various warehouse classifications, which fall into either wage band, which bands are part of the Employer's national wage policy. All employees are subject to an overall personnel manual, but drivers have an additional manual known as the "DSR Handbook" which details their duties and responsibilities. Drivers must have an ordinary driver's license, a clean driving record and a Department of Transportation physical. Drivers and their assistants are the only CSC employees who are required to wear a uniform; they have somewhat more stringent dress and grooming standards than the warehouse personnel, as they are in direct contact with the Employer's customers.

The warehouse personnel operate more on an around-the-clock shift sequence, with various classifications reporting at different times of the day, depending on the job requirements. Incoming goods are processed and stored by warehouse employees. When a customer order is received, the warehouse employees "pick" the order and load it onto the appropriate truck in the necessary sequence, for delivery by the drivers. There is limited interaction between the drivers and the warehouse personnel. On limited occasions, drivers and loaders may interact over the loading scheme and, as mentioned above, some loaders may act as driver assistants.

There is evidence of one involuntary transfer between the warehouse and driving function, in May 2001, when, in lieu of a layoff, one driver assistant transferred to the warehouse. There is some evidence of approximately ten voluntary transfers from transportation to the warehouse and vice versa during the past year. In that same period, there were approximately four instances of drivers performing warehouse administrative tasks as a light duty assignment while recovering from injuries. There is evidence of at least one driver performing some warehouse administrative functions on an infrequent basis to fill out his eight-hour day. Warehouse and transportation employees can apply for openings in any departments through an internal job posting system; there were 25 of these voluntary transfers from the warehouse to the transportation department since approximately 1996, or about 3-4 per year. There are about 50 transportation employees, and about 134 employees in the non-transportation functions in the warehouse.

Single/Multiple Facility Appropriateness

A single facility unit is presumptively appropriate unless it has been "so effectively merged into a more comprehensive unit, or has lost its separate identity." *J&L Plate Inc.* 310 NLRB 429 (1993). The burden of rebutting such presumption rests on the party requesting a multi-facility unit - here, the Employer. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations, similarity of skills, functions and working conditions, degree of employee interchange, geographic separation and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999). In particular, in *Esco Corporation*, 298 NLRB 837 (1990) the Board emphasized the amount of employee interchange and geographic separation as critical elements in determining whether the single facility presumption has been overcome. Thus, in the *Esco* case the Board found a single facility appropriate for collective bargaining despite the existence of centralized operations, limited local autonomy and common employee skills and functions. There was minimal interchange, there was a non-supervisory lead at the single facility found appropriate, and the other facilities were about 174 and 300 miles from that facility.

In the instant case I find the Employer maintains centralized control over labor relations and daily operations. Similar skills are required in Kent, Mt. Vernon and Everett. While the Mt. Vernon and Everett drivers do not report to the Kent facility physically, they do so

administratively. There is no separate supervision at these sites, no administrative connection to the store. Rather, the only supervision comes from Kent. While the non-Kent drivers never interchange at Kent, the Kent drivers regularly cover for non-Kent drivers for vacations or illnesses. The non-Kent driving work is totally integrated with the Kent facility, in that all of the non-Kent orders are pulled in Kent, dropped briefly at the other cities, where the merchandise is trans-loaded and delivered, never entering into storage or inventory in the applicable stores. Everett is only 50 miles up the I-5 corridor, Mt. Vernon about 85. Finally, if these drivers were excluded, they would make a small, residual group, not administratively attached to either of the stores, and lacking separate supervision – in essence, an inappropriate unit themselves. For all these reasons, I find it inappropriate to exclude these locations from the Kent Unit.

Driver Unit Appropriateness

A petitioner need not seek the most appropriate unit, but only *an* appropriate unit, based on the community of interest of the employees involved. *Motts Shop Rite of Springfield, Inc. and Motts Shop Rite of Cicopee, Inc.*, 182 NLRB 172, fn.3 (1970) See also *Overnite Transportation Company*, 322 NLRB 723 (1996). A unit composed of truck drivers may be found to be an appropriate unit. See *Rinker Materials*, 294 NLRB 738 (1989); *Memphis Furniture Mfg.*, 259 NLRB 401 (1981); *Salvation Army*, 225 NLRB 406 (1976). The drivers here spend most of their working time away from the warehouse. Drivers are required to have a DOT medical card and receive special training for their positions. They routinely attend their own meetings, have distinctive uniforms; they do not utilize a break room as they are gone from the facility for the full day. Drivers do not perform the work of warehouse employees except on limited occasions when they are placed on light duty or return early from the road.

Drivers must interact directly with customers - unlike warehouse employees - requiring a different mode of demeanor, dress and decorum. Drivers work day shifts only, while the warehouse is operated around the clock. There is separate supervision for the drivers.

Based on the foregoing and the record as a whole I find the Kent drivers and driver assistants share a community of interest which is sufficiently distinct from the other employees in the Employer's proposed overall warehouse and transportation unit to constitute a separate appropriate unit. While there is some interchange involving warehouse persons assisting on furniture deliveries, it is quite small overall. The transfers between the groups are employee – initiated, a circumstance carrying less weight than Employer - initiated ones.

However, I do note that the lead router and check-in clerk have the same supervision as the drivers, have daily personal contacts and job interaction, have essentially the same wage scale. While these two classifications do not actually drive trucks, their job functions and interactions with the drivers are so intertwined as to create a common community of interest with the drivers as opposed to the warehouse employees. Therefore I would include the check-in clerk and the routing lead in the drivers unit.

There are approximately 53 employees in the appropriate Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the

date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Teamsters Local 174, affiliated with International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before August 29, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 5, 2002.

DATED at Seattle, Washington, this August 22nd day of 2002.

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